

Appl. No. 08/135,046
Amndt. dated: January 22, 2004
Reply to Office Action of November 21, 2003
Attorney Docket No. 000594-125951

Substance of Interview on December 17, 2003

The undersigned who conducted the interview has read the comments of the examiner dated January 7, 2004, and does not disagree with these comments. Whereas the undersigned asserted that the rejection was believed to be based on an incorrect summation of the decision of the interference referred to, it was determined that a follow up issue to be resolved is the determination as to whether applicant herein is claiming the same or a different invention than is claimed in Cullen. It was agreed that applicant would address the priority issues raised in the office action and would further argue the applicability of the Cullen references to the herein claims. That issue is argued in Exhibit A attached to the amendment.

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REMARKS

Rejection of Claims on Formal Matters

Claim 6 has been amended to obviate the rejection on formal matters. Further amendments have been made to the independent Claims 1 and 6 to clarify the invention being claimed and to further distinguish the claims from the claims of the Cullen patents.

Response to Rejection of Claims Over Prior Art

The rejections of Claims 1-6 and 9 as set forth in pages 4-7 of the office action are all based in whole or in part on the Cullen patents 5,345,744 or 5,426, 910. These Cullen patents have the same effective date of filing. It is believed and understood that if the Cullen patents are removed as prior art references, the claims herein will be allowable to applicant. Accordingly, the argument here presented is substantially directed to the issue of priority.

The examiner states in the paragraph bridging pages 4 and 5 of the Office Action that "Cullen's ('744) claimed invention, as represented by Claim 1, or Cullen's (5,426,910) claimed invention as represented by Claims 1, 3 and 4, make known prior to applicant's invention an apparatus ---" [as claimed by applicant]. The rejection of all of the claims of record are accordingly rejected under 35 USC 103(a) on a combination including the above Cullen patents. It is thus understood that the examiner is asserting that Cullen's invention is prior to applicant's invention.

As recited in the "Background" section of the Office Action at page 2, the first of the Cullen patents was issued and allowed Claims 7 and 8 of the present application were considered by applicant to claim the same invention as claimed in the Cullen patent.

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These claims required a support structure, e.g., a reel mounted on the bagging machine for holding the conduit to be fed into the tunnel. The claims without the conduit support mounted on the bagging machine were not considered allowable by the examiner. The prosecution throughout numerous arguments established the conduit support on the bagging machine as a critical element for allowability. Applicant considered that the machine without the conduit support was separately allowable, initiated interference with Cullen as concerns Claims 7 and 8 in a separate (divisional) application, and pursued Claims 1-6 and 9 in the present application.

As indicated in the Office Action, the interference decision was adverse to applicant. However, the basis of the decision is believed important and not correctly explained in the Office Action. In the sentence bridging pages 4 and 5 of the Office Action, applicant's Claims 6 and 9 are rejected as anticipated by Cullen because the invention of the Cullen claims "make known, prior to applicant's invention, an apparatus [of the invention]. This is not correct and is contrary to the decision in the interference proceeding. The Interference Board held:

It is considered that the junior party Garvin has established conception of the subject matter of the count by January 1991 and actual reduction to practice of that subject matter no later than October 1991, when the prototype was tested in Washington State.

The above finding prior to the invention and filing of Cullen clearly establishes the applicant herein as being the prior inventor. The adverse decision was reached because they found that applicant Garvin abandoned, suppressed or concealed the invention.

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For purposes of clarification and in summary, applicant Garvin had developed, built and tested a machine for grain bagging. Whereas the need for grain bagging for purposes of drying is seasonal and weather-dependent, field testing was planned but put on hold. Applicant in the meantime pursued an opportunity to apply the invention to compost bagging. The owner of the Meyer patent cited herein is also the owner of a patent directed to the processing of compost in a plastic bag thought to be necessary for practicing the process of this invention, and many months were spent negotiating license rights from the owners of this latter Meyer patent. The asserted interruption of development activity which involved such negotiation was considered to be abandonment under the rules of interference and was the basis for the adverse decision.

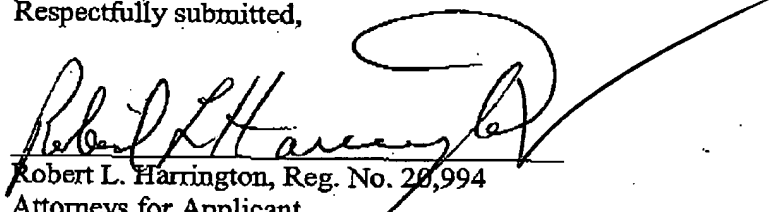
The present status is that applicant's invention is in fact prior to that of Cullen. The decision of abandonment established only that applicant is not entitled to the invention of the claims in interference. As established by 37 CFR 1.131, applicant is entitled to swear back of Cullen as to an invention not claimed by the Cullen patent. It has been established that the conduit support on the bagging machine of the Cullen patents was a required limitation and the Cullen claims without the conduit support on the bagging machine was not patentable to Cullen.

Applicant here is not claiming the same invention as presented in the interference, i.e., applicant's claims emphasize the feed tube for feeding conduit into the bag and do not include a conduit support mounted on the machine. An objective of the feed tube is to guide the conduit, at least in part, through that portion of the tunnel where material is moving in somewhat of a turmoil from the tunnel inlet to a condition of filling the tunnel

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and wherein the more flexible conduit can be diverted from its intended path. Refer to the specification at page 3, line 24 to page 4, line 9, and page 10, lines 21-26. As concerns this disclosed but not claimed invention of Cullen, see the argument which is attached hereto as Exhibit A. Applicant could not invoke an interference with the claims here in issue and to the extent the present claims are determined to be patentable, they are patentable to applicant, the prior inventor, and not to Cullen. Both of the Cullen and Meyer patents are removed as prior art references under 37 CFR 1.131 and should be withdrawn as prior art references as concerns the claims herein. The examiner is respectfully requested to consider the allowability of the claims without regard to the Cullen and Meyer patents and to grant allowance.

Respectfully submitted,



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